

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Jose Jesus Garcia, an individual, and
CARMEN GARCIA, an individual

DEFENDANTS

Wachovia Mortgage, FSB

**(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)**

Alameda

(c) Attorney's (Firm Name, Address, and Telephone Number)
WEISS LLP

24405 Amador Street

Hayward, CA 94544
510.581.1857

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Reed Smith LLP

1999 Harrison Street, Ste. 2400

Oakland, CA 94612
510.763.2000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF
 1

DEF
 1

Incorporated or Principal Place of Business In This State

PTF

DEF
 4

Citizen of Another State

PTF
 2

DEF
 2

Incorporated and Principal Place of Business In Another State

PTF
 5

DEF
 5

Citizen or Subject of a Foreign Country

PTF
 3

DEF
 3

Foreign Nation

PTF
 6

DEF
 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders Suits
- 190 Other Contract
- 195 Contract Product Liability
- 196 Franchise

TORTS

PERSONAL INJURY	PERSONAL INJURY
<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice
<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury

PERSONAL PROPERTY

- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

FORFEITURE/PENALTY

- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC 881
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs.
- 660 Occupational Safety/Health
- 690 Other

BANKRUPTCY

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- 820 Copyrights
- 830 Patent
- 840 Trademark

SOCIAL SECURITY

- 861 HIA (1395f)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS - Third Party 26 USC 7609

OTHER STATUTES

- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 480 Consumer Credit
- 490 Cable/Sat TV
- 810 Selective Service
- 850 Securities/Commodities Exchange
- 875 Customer Challenge 12 USC 3410
- 890 Other Statutory Actions
- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Information Act
- 900 Appeal of Fee Determination Under Equal Access to Justice
- 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or 5 Transferred from another district

(specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sections 1332 and 1441

VI. CAUSE OF ACTION

Brief description of cause:
Complaint for Unfair Competition, Fraud, Misrepresentation, other

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ 75,000+
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

**VIII. RELATED CASE(S)
IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)**

SAN FRANCISCO/OAKLAND

SAN JOSE

DATE

8-21-2008

SIGNATURE OF ATTORNEY OF RECORD

Keith D. Yandell

E-filing

1 Jack R. Nelson (SBN 111863)
 2 Theodore T. Ting (SBN 191163)
 3 Keith D. Yandell (SBN 233146)
 REED SMITH LLP
 1999 Harrison Street, Suite 2400
 Oakland, CA 94612-3572

4 **Mailing Address:**
 5 P.O. Box 2084
 6 Oakland, CA 94604-2084

7 Telephone: +1 510 763 2000
 Facsimile: +1 510 273 8832

8 Attorneys for Defendant Wachovia Mortgage, FSB

FILED
 AUG 21 2008
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
Fees Paid NP

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12 JOSE JESUS GARCIA, an individual, and
 CARMEN GARCIA, an individual,

13 Plaintiffs,

14 vs.

15 WACHOVIA, entity unkown, and DOES 1
 through 20,

16 Defendant.

17 Case No. CO8-04002-B

Formerly Alameda Superior Court Case No.
 HG08398971

18 **NOTICE OF REMOVAL**

19 PLEASE TAKE NOTICE THAT Defendant Wachovia Mortgage, FSB, formerly known as
 20 World Savings Bank, FSB ("Wachovia") hereby removes the above-entitled civil action from the
 Superior Court of California, County of Alameda, to the United States District Court for the
 Northern District of California, pursuant to 28 U.S.C. Section 1332 and 28 U.S.C. Section 1441, and
 alleges that removal is proper for the following reasons:

21 1. On July 16, 2008, plaintiffs Jose and Carmen Garcia ("Plaintiffs") filed the above-
 entitled action in the Superior Court of the State of California, County of Alameda. Wachovia first
 received notice of this action when it was served with a copy of the summons and complaint on July
 24, 2008. A copy of the state Court's file in this matter, including the Complaint and summons, is
 attached as Exhibit A. This notice is being filed within 30 days after service of the complaint and is
 therefore timely under 28 U.S.C. Section 1446(b).

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

GO 44 SEC. #
 NOTICE OF ASSIGNMENT
 TO MASTERS JUDGE SECRETARY
 28

1 2. Plaintiff is a citizen and resident of the State of California.

2 3. Wachovia is, and at all relevant times was, a federal savings bank, operating under
3 the supervision of the Office of Thrift Supervision. For purposes of determining whether diversity
4 jurisdiction exists, a federal savings bank shall be considered to be a citizen only of the State in
5 which such savings bank has its home office. *See Section 5 of the Home Owners' Loan Act [12*
6 U.S.C. §1464(x)]. Wachovia is chartered in and has its home office in the State of Nevada.

7 4. Complete diversity of citizenship exists in that Plaintiffs are citizens of California,
8 and defendant is a citizen of Nevada.

9 5. Defendants Does 1 through 20, are defendants sued under fictitious names who have
10 not been served with the Summons and Complaint in this action. For purposes of this Notice of
11 Removal, the citizenship of such fictitiously-named defendants must be disregarded pursuant to 28
12 U.S.C. Section 1441(a).

13 6. The action is a civil action of which this Court has original jurisdiction under 28
14 U.S.C. § 1332, and is one which may be removed to this Court by Wachovia pursuant to the
15 provisions of 28 U.S.C., §1441(b) in that it is a civil action between citizens of different states and
16 the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. The
17 Complaint seeks rescission of one or more of Plaintiffs' loans with Wachovia and unspecified
18 amounts in compensatory and general damages, special damages, restitution and disgorgement and
19 attorneys' fees (Complaint at page 10, lines 3-10). *See, e.g., White v. FCI USA, Inc.*, 319 F.3d 672,
20 674 (5th Cir. 2003) (totality of wrongful termination plaintiffs' claims for special and general
21 damages, punitive damages and attorneys fees combined to make "facially apparent" that amount in
22 controversy exceeded \$75,000 even though complaint did not specify such). *See also, Matheson v.*
23 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (Where it is not evident from the
24 clear allegations of the complaint that more than \$75,000 is in controversy, the court may still
25 consider "facts presented in the removal petition as well as any summary-judgment-type evidence
26 relevant to the amount in controversy at the time of removal."). Thus, it is facially apparent that the
27 combination of these amounts exceeds \$75,000.

28 7. Attached as Exhibit A to the accompanying Declaration of Sharon Manson ("Manson

1 Decl.") is a true and correct copy of three Notes evidencing Wachovia loans Plaintiffs hold. The
 2 balances on Plaintiffs' loans are \$490,500.53, \$337,428.03 and \$295,170.10, respectively. Should
 3 Plaintiffs prevail in their attempt to rescind these loans, Wachovia would lose over \$1,000,000,
 4 \$740,000 and \$650,000, respectively, in interest payments over the lives of the loans. *See Manson*
 5 *Decl.* at ¶ 4. Moreover, should Plaintiffs succeed in rescinding these loans, Wachovia would be
 6 forced to refund over \$40,826.95, \$28,742.02 and \$25,637.71 (respectively) in interest [*Id.* at ¶ 2]
 7 and \$5,748, \$6,733 and \$5,593 (respectively) in loan related fees [*Id.* at ¶ 3].

8. The jurisdictional minimum may also be satisfied by claims for extra-contractual
 9 damages, special and general damages, attorneys' fees and punitive damages. *See, Gibson v.*
 10 *Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001); *Simmons v. PCR Technology*, 209 F. Supp. 2d
 11 1029, 1031 (N.D. Cal. 2002). These amounts, alone, demonstrate that the amount in controversy is
 12 greater than \$75,000.

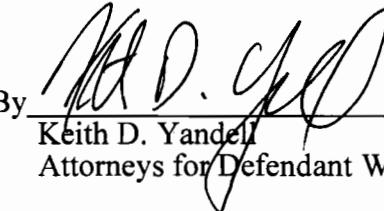
9. To establish the amount of punitive damages in controversy, a defendant may
 10 introduce evidence of jury verdicts in cases involving analogous facts. *See Simmons*, 209 F. Supp. 2d
 11 at 1033. Punitive damages in this case could by themselves exceed the sum of \$75,000 if plaintiff
 12 were able to plead and prove World engaged in fraud (which World expressly contends Plaintiffs
 13 will be unable to do). *See, e.g., Griffith v. Barnes*, 2008 U.S. Dist. LEXIS 45058 (D.C. Cir. June 11,
 14 2008) (awarding plaintiffs \$100,000 in punitive damages based on defendant's predatory lending
 15 tactics including misrepresentation of material facts).

10. The civil action is therefore removed to this District Court on the basis of diversity
 11 jurisdiction under the provisions of 28 U.S.C. sections 1332, 1441 and 1446.

11. A Notice of Filing Removal is concurrently being filed with the Superior Court for
 12 the State of California, County of Alameda, and being served on plaintiff.

13 DATED: August 21, 2008.

14 REED SMITH LLP

15 By 
 16 Keith D. Yandell
 17 Attorneys for Defendant Wachovia Mortgage, FSB

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

WACHOVIA, entity unknown, and DOES 1 through 20

RECEIVED
JUL 24 2008

YOU ARE BEING SUED BY PLAINTIFF: **LEGAL DIVISION**
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
JOSE JESUS GARCIA, an individual, and CARMEN GARCIA, an individual

Yvette Goldberg SUM-100
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED BY FAX
ALAMEDA COUNTY

July 16, 2008

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una Carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la Corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte la podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Alameda County Superior Court
24405 Amador Street
Hayward, CA 94544

CASE NUMBER
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Mogeeb Weiss, Esq.

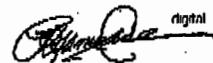
WEISS LLP

799 Fletcher Lane Suite 202, Hayward, CA 94544

DATE: July 16, 2008
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)



(For proof of service of this summons, use Proof of Service of Summons (form POS-010))
(Para comprobar la entrega de esta citación, use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.

2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

other (specify):

CCP 416.60 (minor)

CCP 416.70 (conservatee)

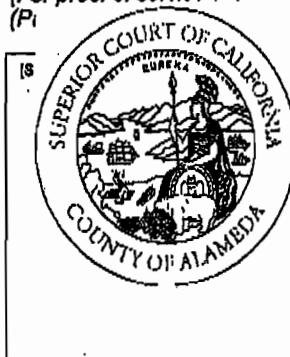
CCP 416.90 (authorized person)

4. by personal delivery on (date):

Legal Division

JUL 28 2008

TX1621



1 MOGEEB WEISS (SBN 236087)
 2 WEISS LLP
 3 799 Fletcher Lane Suite 202
 Hayward, CA 94544
 Telephone: (510) 581-1857
 Facsimile: (510) 581-4892
mweiss@wslawgroup.com

5 Attorneys for Plaintiffs
 JOSE JESUS GARCIA & CARMEN GARCIA

FILED BY FAX
 ALAMEDA COUNTY

July 16, 2008

7 CLERK OF
 8 THE SUPERIOR COUR
 9 By Rosanne Case, Dept
 10
 11
 12
 13

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CASE NUMBER:
 HG08398371

11 COUNTY OF ALAMEDA

14 JOSE JESUS GARCIA, an individual, and
 15 CARMEN GARCIA, an individual

16 vs.
 17 Plaintiffs,

18 WACHOVIA, entity unknown, and DOES 1
 through 20

19 Defendant.

20 Case No.:

21
 22 COMPLAINT FOR VIOLATION OF
 BUSINESS & PROFESSIONS CODE
 SECTION 17500, VIOLATIONS OF
 BUSINESS AND PROFESSIONS CODE
 SECTION 17200 (UNFAIR
 COMPETITION), FRAUD -
 INTENTIONAL
 MISREPRESENTATION,
 CONCEALMENT, PROMISSORY
 FRAUD, VIOLATION OF CIVIL
 CODE 1632, RESCISSION

23 Plaintiffs, JOSE JESUS GARCIA & CARMEN GARCIA (Hereinafter
 "Plaintiffs") allege the following, on information and belief:

24 1. Defendant WACHOVIA is the successor in interest to WORLD
 25 SAVINGS, the entity that offered the loan to Plaintiffs. Wachovia's entity is unknown but it has
 26 transacted and continues to transact business throughout the State of California, including in
 27 Alameda County.

1 2. Plaintiffs do not know the true names and capacities of the Defendants
 2 sued herein as Does 1-20, inclusive, and therefore Plaintiffs sue said Defendants by the foregoing
 3 fictitious names. When the true names and capacities of these Defendants become known,
 4 Plaintiffs will amend this Complaint to include such true names and capacities and, if necessary,
 5 will seek leave to amend to add additional charging allegations against them.

6 3. Whenever reference is made in this Complaint to any act of any
 7 defendant(s), that allegation shall mean that each defendant acted individually and jointly with
 8 the other defendants.

9 4. Any allegation about acts of any corporate or other business defendant
 10 means that the corporation or other business did the acts alleged through its officers, directors,
 11 employees, agents and/or representative while they were acting within the actual or ostensible
 12 scope of their authority.

13 5. At all relevant times, each defendant committed the acts, caused or
 14 directed others to commit the acts, or permitted others to commit the acts alleged in this
 15 Complaint. Additionally, some or all of the defendants acted as the agent of the other defendants,
 16 and all of the defendants acted within the scope of their agency if acting as an agent of another.

17 6. At all relevant times, each defendant knew or realized that the other
 18 defendants were engaging in or planned to engage in the violations of law alleged in this
 19 Complaint. Knowing or realizing that other defendants were engaging in or planning to engage in
 20 unlawful conduct, each defendant nevertheless facilitated the commission of those unlawful acts.
 21 Each defendant intended to and did encourage, facilitate, or assist in the commission of unlawful
 22 acts, and thereby aided and abetted the other defendants in the unlawful conduct.

23 7. At all relevant times, Defendants have engaged in a conspiracy, common
 24 enterprise, and common course of conduct, the purpose of which is and was to engage in the
 25 violations of law alleged in this Complaint.

DEFENDANT'S BUSINESS ACTS AND PRACTICE

26 8. The mortgage market changed in recent years from one in which lenders
 27 originated mortgages for retention in their own portfolios to one in which lenders attempted to

1 generate as many loans as possible for resale on the secondary mortgage market. The goal for
 2 lenders such as World Savings, the predecessor to Wachovia, was not only to originate high
 3 mortgage loan volumes but also to originate loans with above-market interest rates and other
 4 terms which would attract premium prices on the secondary market.

5 9. World Savings offered a variety of loan products that were both
 6 financially risky and difficult for borrowers to understand, including in particular payment option
 7 and adjustable rate mortgages.

8 10. The Payment Option Adjustable Rate Mortgage (hereinafter "ARM") is
 9 complicated mortgage product which entices consumers by offering a very low "teaser" rate -
 10 often as low as 1% for an introductory period of one or three months. At the end of introductory
 11 period, the interest rate increases dramatically.

12 11. When the teaser rate on an ARM expires, the loan immediately becomes
 13 an adjustable rate loan. Unlike most adjustable rate loans, where the rate can only change once
 14 every year or six months, the interest rate on ARM can change every month (if there is a change
 15 in the index used to compute the rate.)

16 12. A borrower with an ARM mortgage has the option of making monthly
 17 payments as though the interest rate had not changed. Defendant offered ARM mortgagors four
 18 payment options. The first option is a minimum payment that is based on the introductory
 19 interest rate. Defendant marketed the minimum payment as the "payment rate" to deceive
 20 borrowers including Plaintiffs.

21 13. However, the minimum payment on an ARM is less than the interest
 22 accruing on the loan. The unpaid interest is added to the principal amount of the loan, resulting in
 23 negative amortization. The minimum payment remains the same for one year and then increases
 24 by certain percentage every year for several years, and then the payment will be "recast" to be
 25 fully amortizing causing a substantial jump in the payment amount often called payment shock.

26 14. However, the loan balance on an ARM also has a negative amortization
 27 cap, in the case of Plaintiffs 125% of the original principal of the loan. If the balance hits the
 28 cap, the monthly payment is immediately raised to the fully amortizing level (i.e., all payments

1 after the date the cap is reached must be sufficient to pay off the new balance over the remaining
 2 life of the loan). When that happens, the borrower experiences significant payment shock.
 3 Plaintiffs are very likely to hit the negative amortization cap and suffer payment shock well
 4 before the standard 7 year recast date.

5 15. Instead of making the minimum payment, Plaintiffs have the option of
 6 making an interest-only payment for five years. Plaintiffs then experience payment shock when
 7 the payment recasts to cover both principal and interest for the remaining term of the loan.
 8 Alternatively, Plaintiffs can choose to make a fully amortizing principal and interest payment
 9 based on either a 15-year or a 30-year term.

10 16. Even if Plaintiffs elect to make interest-only payment, they still will
 11 experience payment shock. Again assuming the interest rate stays constant at 7.995% over the
 12 life of the loan, Plaintiffs initial payments would be approximately \$1,229.87 to \$2,040.41 for
 13 eight years. Thereafter, the payment will increase to approximately \$3,328.40 per month, an
 14 increase of over 50%.

15 17. When Plaintiffs obtained an ARM from defendant, the only initial
 16 monthly payment amount that appeared anywhere in their loan documents was the minimum
 17 payment amount. In other words, documents provided to Plaintiffs assumed they would make
 18 only the minimum payment. Thus, Plaintiffs would not know the monthly payment necessary to
 19 make a payment that would, for example, cover accruing interest, until they received the first
 20 statement after the expiration of the teaser rate, well after all loan documents were signed.

21 18. Defendant and the brokers it accepted as its "business partners" or agent
 22 misrepresented or obfuscated the true terms of ARM offered by Defendant, including but not
 23 limited to misrepresenting or obfuscating the amount of time that the interest rate would be fixed
 24 for the loan, misrepresenting or obfuscating the risk of negative amortization and the fact that the
 25 payment rate was not the interest rate, and misrepresenting or obfuscating that the minimum
 26 payment would not apply for the life of the loan.

27 19. Defendant and its business partner brokers also misrepresented or
 28 obfuscated how difficult it might be for Plaintiffs to refinance an ARM loan. In fact, after making

1 only the minimum payment, because of negative amortization Plaintiffs are likely would not be
 2 able to refinance an ARM loan unless the home serving as security for the mortgage had
 3 increased in value. Given the current market conditions, it is unlikely that will happen.

4 20. Defendant and its business partner brokers misrepresented or
 5 obfuscated the fact that this ARM included a prepayment penalty and failed to explain the effect
 6 that making only the minimum payment would have on the amount of the prepayment penalty. If
 7 Plaintiffs seek to refinance after having made the minimum payment for an extended period, but
 8 while a prepayment penalty is still in effect, the negative amortization can cause the amount of
 9 the prepayment penalty to increase. Prepayment penalties typically equal six months worth of
 10 accrued interest. As negative amortization causes the loan principal to increase, it also causes an
 11 increase in the amount of interest that accrues each month, thereby increasing the prepayment
 12 penalty.

13 21. Defendant and its business partner brokers also represented that the
 14 prepayment penalty could be waived if Plaintiffs refinanced with Defendant. However,
 15 Defendant sells most of the loans it originates, and it has at most limited authority to waive
 16 prepayment penalties on loans it does not own, even when it controls the servicing (and is often
 17 required to pay the prepayment penalties on loans it does not own in the instances where it is not
 18 able to collect the penalty from the Plaintiffs.)

19 22. Because ARM start with lower monthly payments and interest rates than
 20 most other types of loan products, and given their complex nature, Defendant was able to easily
 21 sell such loans to Plaintiffs by focusing on the initial low monthly payments and/or rates and by
 22 obscuring or misrepresenting the true risks of such loan.

23 23. Defendant sold to the Plaintiffs the minimum payment. Defendant
 24 achieved this by showing Plaintiffs the minimum monthly payments for the ARM in comparison
 25 to other loan products with larger payments. Naturally, in this situation, Plaintiffs chose the
 26 option with the lowest payment, the ARM, without realizing that the payment would last for only
 27 a short time before it would begin to increase. Given the complexity of ARM, such a presentation
 28 easily misled Plaintiffs regarding the long-term afford-ability of their loans.

1 24. Plaintiffs were subjected to the deceptive marketing practices of defendant
 2 and would not understand the true risks and likely unaffordability of their ARM. Plaintiffs did
 3 not read their loan documents and disclosures before signing because it was all in English and
 4 Plaintiffs only speak Spanish. Defendant made Plaintiffs sign a large stack of documents without
 5 providing the Plaintiffs with time to read them or provide Spanish translation. Given the
 6 complexity of ARM, Plaintiffs did not understand the terms of the loans they were being sold.

7 25. As a result, Plaintiffs obtained ARM mortgage and did not understand that
 8 their initial monthly payment would at some point "explode," that their initial interest rate would
 9 increase and become adjustable, or that the principal amount of their loans could actually
 10 increase.

11 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**
 12 **VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17500**

13 26. Plaintiffs hereby restate and incorporate by reference Paragraph 1 through
 14 25, above, as though fully set forth herein.

15 27. Defendants have violated and continue to violate Business and Professions
 16 Code section 17500 by making or disseminating untrue or misleading statements, or by causing
 17 untrue or misleading statements to be made or disseminated, in or from California, with the
 18 intent to induce members of the public to enter into mortgage loan or home equity line of credit
 19 transactions secured by their primary residences. These untrue and misleading statements include
 20 but are not necessarily limited to:

21 a. Statements regarding the terms and payment obligations of ARM
 22 offered by defendant, including statements that the initial payment rate was the interest rate,
 23 statements regarding the duration of the initial payment, statements regarding the duration of the
 24 initial interest rate, and statements obfuscating the risks associated with such mortgage loans, as
 25 described fully under the **Defendant's Business Acts and Practice**, above.

26 b. Statements that Plaintiffs with ARM mortgages offered by
 27 defendants would be able to refinance the mortgage loans before the interest rates reset, when in
 28 fact they most likely could not, as described fully under the **Defendant's Business Acts and**

1 Practice, above.

2 c. Statements regarding prepayment penalties on ARM offered
 3 by Defendant, including statement that prepayment penalties could be waived, when in fact they
 4 could not, as described fully under the **Defendant's Business Acts and Practice**, above.

5 28. Defendants knew, or by the exercise of reasonable care should have
 6 known, that these statements were untrue or misleading at the time they were made.

7 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS VIOLATIONS OF**
BUSINESS AND PROFESSIONS CODE SECTION 17200 (UNFAIR COMPETITION)

8 29. Plaintiffs hereby restate and incorporate by reference Paragraph 1 through
 9 28, above, as though fully set forth herein.

10 30. Defendants have engaged in acts or practices that constitute unfair
 11 competition, as that term is defined in Section 17200 of the Business and Professions Code. Such
 12 acts or practices include, but are not limited to, the following:

13 a. Making untrue or misleading representations regarding the terms
 14 and payment obligations of ARM, including representations regarding the payment rate, the
 15 duration of initial interest rates, the duration of initial monthly payments, the inclusion of
 16 prepayment penalties, the availability of prepayment penalties, the payment shock that borrowers
 17 were likely to experience, and the risks associated with such mortgage loans, as described fully
 18 under the **Defendant's Business Acts and Practice**, above.

19 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS FRAUD**

20 A. **Intentional Misrepresentation**

21 31. Plaintiffs hereby restate and incorporate by reference Paragraph 1 through
 22 30, above, as though fully set forth herein.

23 32. Defendants, and each of them, without limitation, told Plaintiffs that their
 24 payments for the first five years will remain the same, that Plaintiffs can refinance the loan with
 25 Defendants and waive the prepayment penalty, that interest rate on the loan shall remain the same
 26 through the life of the loan.

27 33. Defendants, and each of them, knew that their representations were false

1 in that the interest rate was not going to remain the same through the life of the loan, the
 2 minimum payment was not the interest rate and can render the loan unaffordable.

3 34. Plaintiffs were harmed in that they acted in reliance on Defendants
 4 representations.

5 35. As a further result of Defendants' fraud, Plaintiffs were damaged
 6 in a sum within the jurisdiction of the unlimited division of this Court, said sum to be proven at
 7 trial. Plaintiffs suffered general and special damages in an amount according to proof at the trial
 8 of this matter.

9 B. **Concealment**

10 36. Plaintiffs hereby restates and incorporates by reference Paragraph 1
 11 through 35, above, as though fully set forth herein.

12 37. Defendants, and each of them, failed to disclose and concealed important
 13 facts from Plaintiffs, inclusive of the fact that the minimum payment does not remain the same
 14 for five years, that the minimum payment is not the interest rate, and that the interest rate does
 15 not remain the same through the life of the loan but actually changes.

16 38. Plaintiffs did not know of the concealed facts and reasonably relied on
 17 Defendants' deception. Defendants, and each of them, intended to conceal facts from Plaintiffs.

18 39. Plaintiffs were harmed and the concealment was a substantial factor in
 19 causing the harm. As a result of Defendants' fraud, Plaintiffs were damaged in a sum within the
 20 jurisdiction of this Court, said sum to be proven at trial. Plaintiffs suffered general and special
 21 damages in an amount according to proof at the trial of this matter.

22 C. **Promissory Fraud**

23 40. Plaintiffs hereby restates and incorporates by reference Paragraph 1
 24 through 39, above, as though fully set forth herein.

25 41. By the acts described herein, Defendants, and each of them, made
 26 promises to Plaintiffs without any intention of performing thereon and with knowledge of the
 27 falsity. These promises included, without limitation, that the loan can be refinanced, that the
 28 prepayment penalty can be waived, that the interest rate remains the same through the life of the

1 | loan, and that minimum payment is the payment.

2 42. As a result of Defendants fraud, Plaintiffs were damaged in a sum within
3 the jurisdiction of this Court, said sum to be proven at trial. Plaintiffs suffered general and special
4 damages in an amount according to proof at the trial of this matter.

**FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS VIOLATION OF
CALIFORNIA CIVIL CODE 1632**

7 43. Plaintiffs hereby restates and incorporates by reference Paragraph 1
8 through 42, above, as though fully set forth herein.

9 44. California Civil Code, Section 1632, requires that any person engaged in a
10 trade or business who negotiates primarily in the Spanish language, orally or in writing, is
11 required to provide an unexecuted Spanish-language contract or agreement, or a
12 Spanish-language translation of the disclosures.

13 45. Plaintiffs only speak Spanish and all the negotiations were conducted in
14 Spanish. Defendants were required by Section 1632 to provide unexecuted Spanish-language
15 contracts.

16 46. Defendants breached their obligations under the Code by failing to
17 provide Plaintiffs with the unexecuted Spanish-language contracts and/or disclosures at the time
18 of the refinance.

19 47. As a result of Defendants violation of the Civil Code, Plaintiffs were
20 damaged in a sum within the jurisdiction of this Court, said sum to be proven at trial. Plaintiffs
21 suffered general and special damages in an amount according to proof at the trial of this matter.

FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS RESCISSION OF LOAN AGREEMENT

23 48. Plaintiffs hereby restates and incorporates by reference Paragraph 1
24 through 48, above, as though fully set forth herein.

26 49. Because of violation of Civil Code Section 1632, Plaintiffs are entitled to
27 rescission of the loan agreement. All loan documents were in English and no Spanish translation
of the documents were provided.

PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For compensatory and general damages, according to proof;
 2. For special damages, according to proof;
 3. For Punitive damages in an amount appropriate to punish Defendants and deter others from engaging in similar misconduct;
 4. For restitution and disgorgement, according to proof;
 5. For prejudgment interest at the maximum legal rate;
 6. For costs of the proceedings herein;
 7. For reasonable attorneys fees; and
 8. For rescission of the loan agreement
 9. For all such other and further relief as the Court deems just

Dated this 2 day of July, 2008

WEISS LLP

MOGEEB WEISS Attorneys for
Plaintiffs JOSE JESUS GARCIA &
CARMEN GARCIA

Superior Court of California, County of Alameda



Notice of Judicial Assignment for All Purposes

Case Number: HG08398371

Case Title: Garcia VS Wachovia, entity unknown

Date of Filing: 07/16/2008

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

This case is hereby assigned for all purposes to:

Judge:	Ronni MacLaren
Department:	301
Address:	George E. McDonald Hall of Justice 2233 Shoreline Drive Alameda CA 94501
Phone Number:	(510) 263-4301
Fax Number:	(510) 267-5713
Email Address:	Dept.301@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure §170.6 must be exercised within the time period provided by law. (See Govt. Code 68616(i); Motion Picture and Television Fund Hosp. v. Superior Court (2001) 88 Cal.App.4th 488, 494; and Code Civ. Proc. §1013.)

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

General Procedures

All pleadings and other documents must be filed in the clerk's office at any court location except when the Court permits the lodging of material directly in the assigned department. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO
JUDGE Ronni MacLaren
DEPARTMENT 301

Counsel are expected to know and comply with the Local Rules of this Court, which are available on the Court's website at:
<http://www.alameda.courts.ca.gov/courts/rules/index.shtml> and with the California Rules of Court, which are available at www.courtinfo.ca.gov.

The parties are always encouraged to consider using various alternatives to litigation, including mediation and arbitration, prior to the Initial Case Management Conference. The Court may refer parties to alternative dispute resolution resources.

Self-represented litigants must also comply with the rules cited above. All references to "counsel" in this Order apply equally to self-represented litigants. The Court maintains a Self-Help Center at the Wiley W. Manuel Courthouse, 2nd Floor, 661 Washington St., Oakland.

Please submit a courtesy copy of all filed documents directly to Dept. 301.

Schedule for Department 301

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions.

- Trials generally are held: Mondays and Wednesdays 9:30 a.m. to 4:30 p.m.; Tuesdays and Thursdays at 10:30 a.m. to 4:30 p.m. Trial readiness: Fridays at 9:00 a.m. A pretrial conference may be set two to three weeks before the trial.
- Case Management Conferences are held: Mondays through Thursdays at 9:00 a.m. Timely filed and complete case management statements may eliminate the need for an in-person conference by allowing the Court to issue a Tentative Case Management Order.
- Law and Motion matters are heard: Tuesdays and Fridays at 9:00 a.m.
- Settlement Conferences are heard: Fridays at 1:30 p.m. and such other times as may be available.
- Ex Parte matters are heard: Tuesdays and Fridays at 9:00 a.m. Counsel must comply with Local Rule 4.14
- (1) Counsel should consider and recommend creative, efficient approaches to valuing and resolving their case (CRC §3.724). (2) Potential discovery and other problems should be anticipated and discussed. (3) No discovery motion shall be filed without prior serious efforts to resolve it.

Law and Motion Procedures

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations
 Email: Dept.301@alameda.courts.ca.gov
 Phone: (510) 263-4301

The Court prefers that reservations for the Law and Motion calendar be made by email. Limited hearings are available for summary judgments, preliminary injunction and other time intensive motions.

- Ex Parte Matters

Email: Dept.301@alameda.courts.ca.gov
Phone: (510) 263-4301

The Court prefers that reservations for the Ex Parte calendar be made by email.

Tentative Rulings

The court will issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: www.alameda.courts.ca.gov/domainweb, Calendar Information for Dept. 301
- Phone: 1-866-223-2244

Dated: 07/17/2008

Executive Officer / Clerk of the Superior Court

By

Jean A. Hodges
digital

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 07/18/2008

By

Jean A. Hodges
digital

Deputy Clerk

dkelley

Weiss & Shefayee LLP
 Attn: Weiss, Mogeob
 799 Fletcher Lane
 Ste. 202
 Hayward, CA 94544

Superior Court of California, County of Alameda

<p>Garcia</p> <p style="text-align: center;">vs.</p> <p>Wachovia, entity unknown</p>	<p>Plaintiff/Petitioner(s)</p> <p>Defendant/Respondent(s) (Abbreviated Title)</p>	<p>No. HG08398371</p> <p>NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER Unlimited Jurisdiction</p>
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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.

Notice is given that a Case Management Conference has been scheduled as follows:

Date: 12/01/2008	Department: 301	Judge: Ronni MacLaren
Time: 09:00 AM	Location: George E. McDonald Hall of Justice First Floor 2233 Shoreline Drive, Alameda CA 94501	Clerk: Irene Crowell Clerk telephone: (510) 263-4301 E-mail: Dept.301@alameda.courts.ca.gov Fax: (510) 267-5713
	Internet: http://www.alameda.courts.ca.gov	

ORDERS

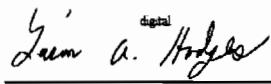
1. You must:
 - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
 - b. Give notice of this conference to any party not included in this notice and file proof of service;
 - c. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
 - d. File and serve a completed Case Management Conference Statement (use of Judicial Council Form CM 110 is mandatory) at least 15 days before the Case Management Conference (CRC 3.725)
2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.
3. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
 - a. Referring to ADR and setting an ADR completion date
 - b. Dismissing or severing claims or parties
 - c. Setting a trial date.

*Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 07/18/2008.

By 
 Lynn A. Hodges
 Deputy Clerk

Jack R. Nelson (SBN 111863)
Theodore T. Ting (SBN 191163)
Keith D. Yandell (SBN 233416)
REED SMITH LLP
1999 Harrison Street, Suite 2400
Oakland, CA 94612-3572

Mailing Address:

P.O. Box 2084
Oakland, CA 94604-2084

Telephone: +1 510 763 2000
Facsimile: +1 510 273 8832

Attorneys for Defendant Wachovia Mortgage, FSB

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JOSE JESUS GARCIA, an individual, and
CARMEN GARCIA, an individual,

Plaintiffs,

VS.

WACHOVIA, entity unknown, and DOES 1 through 20,

Defendant.

Case No. HG08398371
ASSIGNED FOR ALL PURPOSES TO
Judge Ronni MacLaren
Department 301

ANSWER TO UNVERIFIED COMPLAINT

Compl. Filed: July 16, 2007

Defendant Wachovia Mortgage, FSB (“Wachovia”), formerly known as “World Savings Bank, FSB” and erroneously sued as “Wachovia,” answers the unverified complaint of Plaintiffs Jose and Carmen Garcia (“Plaintiff”), as follows:

GENERAL DENIAL

Pursuant to California Civil Procedure Code section 431.30, Wachovia generally denies each and every allegation of the Complaint. Wachovia further denies that Plaintiff is entitled to any relief against it, and denies that Plaintiff has been damaged in the nature alleged or in any other manner, or at all. Further, Wachovia denies that Plaintiff has sustained any injury, damage, or loss by reason of

any conduct, action, error, or omission on the part of Wachovia and/or World, or any agent, employee or any other person acting under Wachovia's and/or World's authority or control.

DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. As a first, separate, and distinct defense, Wachovia alleges that the complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted as against Wachovia and/or World.

SECOND AFFIRMATIVE DEFENSE

(Statutes of Limitation)

2. As a second, separate, and distinct defense, Wachovia alleges that the complaint and each cause of action contained therein that is directed at Wachovia is barred by the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

(Damages Barred by Contract)

3. As a third, separate, and distinct defense, Wachovia alleges that Plaintiffs are barred and/or limited by contract from seeking from Wachovia the damages that Plaintiffs alleges in their complaint.

FOURTH AFFIRMATIVE DEFENSE

(Absence of Duty)

4. As a fourth, separate, and distinct defense, Wachovia alleges that it owed Plaintiff no duty, sounding in either contract or tort, during the period relevant to Plaintiffs' complaint, or at any time, upon which any claim against Wachovia can be based.

FIFTH AFFIRMATIVE DEFENSE

(Conduct Was Reasonable)

5. As a fifth, separate, and distinct defense, Wachovia alleges that Plaintiff is barred from any recovery because Wachovia acted reasonably and in good faith at all times material herein based on relevant facts and circumstances known to Wachovia at the time Wachovia so acted.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Causation)

6. As a sixth, separate, and distinct defense, Wachovia alleges that Plaintiffs' complaint, and all purported causes of action contained therein, are barred in whole or in part because the alleged damage to Plaintiff was not proximately caused by the alleged wrongful acts of Wachovia.

SEVENTH AFFIRMATIVE DEFENSE

(Comparative Fault)

7. As a seventh, separate, and distinct defense, Wachovia alleges that Plaintiffs' alleged injuries were directly and proximately caused or contributed to by the negligence, carelessness, acts, conduct, omissions, activities, recklessness and/or misconduct of or fault of Plaintiffs and/or their agent(s), whose comparative negligence or fault is sufficient to bar these claims against Wachovia and/or to eliminate or proportionately reduce Plaintiffs' entitlement to recovery, if any.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

8. As an eighth, separate, and distinct defense, Wachovia avers that the complaint, and each cause of action therein, is barred by waiver by Plaintiffs' and/or their agent(s) of the wrongs and breaches alleged, and that Plaintiffs are estopped from complaining as to the actions and liabilities set forth in the complaint.

NINTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

9. As a ninth, separate, and distinct defense, Wachovia is informed and believes and thereon alleges that Plaintiffs failed to mitigate their alleged damages as required by law.

TENTH AFFIRMATIVE DEFENSE

(Laches)

10. As a tenth, separate, and distinct defense, Wachovia alleges that Plaintiffs' claims are barred by the doctrine of laches.

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ELEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

11. As an eleventh, separate, and distinct defense, Wachovia alleges that Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

12. As a twelfth, separate, and distinct defense, Wachovia alleges that Plaintiffs would be unjustly enriched if allowed to recover on this complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

(Public Policy)

13. As a thirteenth, separate, and distinct defense, Wachovia alleges that Plaintiffs' Complaint and each Claim for Relief stated therein is by California and federal public policy.

FOURTEENTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

14. As a fourteenth, separate, and distinct defense, Wachovia alleges that Plaintiffs' Complaint is barred by the doctrine of accord and satisfaction.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Damages)

15. As a fifteenth, separate and distinct defense, Wachovia alleges that Plaintiffs did not incur any damage or loss as a result of any act or conduct by Wachovia.

SIXTEENTH AFFIRMATIVE DEFENSE

(Damages are Speculative)

16. As a sixteenth, separate, and distinct defense, Wachovia alleges that any damage or loss incurred as a result of any act or conduct by Wachovia, which damages are specifically denied herein, would be speculative and, thus, too uncertain for recovery.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Justification and Privilege)

17. As a seventeenth, separate, and distinct defense, Wachovia alleges that its acts and omissions as alleged in the complaint were justified and/or privileged.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Intent to Violate Law)

18. As an eighteenth, separate, and distinct defense, Wachovia alleges, that with respect to the matters alleged in the complaint, that it acted without intention of any violation of all applicable laws, regulations, applicable official commentary and government and industry standards, and that if any such violation occurred it was the result of bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

NINETEENTH AFFIRMATIVE DEFENSE

(Compliance With Federal Law)

19. As a nineteenth, separate, and distinct defense, Wachovia alleges that at all times relevant to the complaint, its conduct and activities were in good faith compliance with the applicable laws, regulations, rules and interpretations of the Federal Reserve Board and/or with interpretation or approval of a duly authorized official or employee of the Federal Reserve System, and thus cannot be deemed actionable or unlawful, unfair, fraudulent, deceptive, untrue or misleading.

TWENTIETH AFFIRMATIVE DEFENSE

(Statute of Frauds)

20. As a twentieth separate, and distinct defense, Wachovia alleges that the complaint, and each cause of action thereof, is wholly or partially barred by the applicable Statute of Frauds (to wit, Code of Civil Procedure Section 1971, and/or Civil Code Section 1624).

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TWENTY-FIRST AFFIRMATIVE DEFENSE**(Condition Precedent Not Satisfied)**

21. As a twenty-first, separate, and distinct defense, Wachovia alleges that certain
 2 conditions precedent, which may have given rise to a duty to act or liability on the part of Wachovia
 4 did not arise.

TWENTY-SECOND AFFIRMATIVE DEFENSE**(No Liability for Third Party Conduct)**

22. As a twenty-second, separate, and distinct defense, Wachovia alleges that plaintiff is
 8 precluded from alleging that Wachovia and/or World is responsible for the actions and/or statements
 9 of third parties who were the agent(s) of Plaintiffs, or from alleging that the actions and/or
 10 statements of such agent(s) may or can be imputed to Wachovia.
 11

TWENTY-THIRD AFFIRMATIVE DEFENSE**(No Right to Damages)**

23. As a twenty-third, separate, and distinct defense, Wachovia alleges that Plaintiffs
 14 have failed to establish any right to actual damages in any amount.

TWENTY-FOURTH AFFIRMATIVE DEFENSE**(No Right to Rescission)**

24. As a twenty-fourth, separate, and distinct defense, Wachovia alleges that Plaintiffs
 18 have failed to meet the applicable conditions precedent to exercise any claimed right to rescind, and
 19 thus cannot seek to rescind, the loan contract alleged in the complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE**(No Right to Reformation)**

25. As a twenty-fifth, separate, and distinct defense, Wachovia alleges that Plaintiffs have
 23 failed to allege facts sufficient to state a claim for reformation of the contract at issue and/or that
 24 Plaintiffs are not entitled to reformation of the contract.

26 //

27 //

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TWENTY-SIXTH AFFIRMATIVE DEFENSE**(Disclosures Properly Made)**

26. As a twenty-sixth, separate, and distinct defense, Wachovia alleges that all disclosures required by law or regulation were made to Plaintiffs with respect to the loan transaction referenced in the complaint, and that as a result Plaintiffs have no right to relief against Wachovia of any kind or nature.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE**(Permissible Discrepancies)**

27. As a twenty-seventh, separate, and distinct defense, Wachovia alleges that, if any discrepancies exist between requisite disclosure(s) and actual term(s) of any loan to Plaintiffs, such discrepancies are within tolerance limits set by applicable law, including, but no limited to, those set forth in the Code of Federal Regulations.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE**(Preemption)**

28. As a twenty-eighth, separate, and distinct defense, Wachovia alleges that the federal Truth In Lending Act, 15 USC Section 1602 *et. seq.* (TILA), the amendments to TILA in the federal Home Owner Equity Protection Act, 15 USC Section 1635, *et. seq.* (HOEPA) and 12 CFR 560.2 preempt Plaintiffs' Causes of Action against Wachovia.

TWENTY-NINTH AFFIRMATIVE DEFENSE**(Failure to Join Necessary Parties)**

29. As a twenty-ninth, separate, and distinct defense, Wachovia asserts that Plaintiffs have failed to join all parties necessary to this action including Plaintiffs' mortgage broker.

THIRTIETH AFFIRMATIVE DEFENSE**(Set Off)**

30. As thirtieth, separate, and distinct defense, Wachovia alleges that any amount Plaintiffs seek to recover is offset by the amount Plaintiffs' owe Wachovia.

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THIRTY-FIRST AFFIRMATIVE DEFENSE**(No Basis for Punitive Damages)**

31. As a thirty-first, separate, and distinct defense, Wachovia alleges that California Civil
Code Section 3294, under which Plaintiffs' claim to punitive damages is apparently made, if
applicable to this action, is invalid on its face or as applied to Wachovia pursuant to Article I,
Section 10, Article IV, Section 2 and the First, Fifth, Sixth, Eighth and Fourteenth Amendments to
the Constitution of the United States, and Article I, Sections 7, 9, 15 and 17, and Article IV Section
16 of the California Constitution.

THIRTY-SECOND AFFIRMATIVE DEFENSE**(Punitive Damages Unconstitutional)**

32. As a thirty-second, separate, and distinct defense, if it is determined that Plaintiffs
have or may be permitted to assert claims for punitive damages, the application of claims for
punitive damages would constitute a violation of Wachovia's constitutional rights pursuant to Article
I, Section 10, Article IV, Section 2, and the First, Fifth, Sixth, Eighth and Fourteenth Amendments
to the Constitution of the United States, and Article I, Sections 7, 9, 15 and 17, and Article IV,
Section 16 of the California Constitution.

THIRTY-THIRD AFFIRMATIVE DEFENSE**(Absence of Malice, Fraud, or Oppression)**

33. As a thirty-third, separate, and distinct defense, Wachovia alleges that Plaintiffs'
claims for punitive damages are barred because Wachovia's conduct did not rise to the level of
malice, fraud or oppression.

34. Wachovia also reserves the right to assert other defenses as may become available or
apparent during the course of discovery or other proceedings.

24 //

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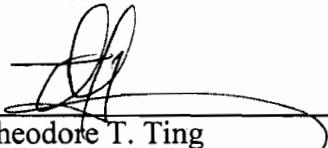
1 WHEREFORE, Wachovia demands judgment in its favor, the dismissal of Plaintiffs'
2 complaint as to Wachovia and World, costs of suit and attorneys' fees and all other relief that this
3 Court may deem just and proper.

4

5 DATED: August 20, 2008.

6 REED SMITH LLP

7 By

8 
Theodore T. Ting
9 Attorneys for Defendants
Wachovia Mortgage, FSB

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 1999 Harrison Street, Suite 2400, Oakland, CA 94612-3572. On August 20, 2008, I served the following document(s) by the method indicated below:

ANSWER TO UNVERIFIED COMPLAINT

- by transmitting via facsimile on this date from fax number +1 510 273 8832 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).
 - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
 - by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.
 - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
 - by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.
 - by transmitting via email to the parties at the email addresses listed below:

Mogeeb Weiss
WEISS LLP
799 Fletcher Lane, Suite 202
Hayward, CA 94544
Telephone: (510) 581-1857
Facsimile: (510) 581-4892
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Counsel for Plaintiffs

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 20, 2008, at Oakland, California.

David P. Kelley